

Message Text

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PAGE 01 STATE 087113

62

ORIGIN L-03

INFO OCT-01 AF-10 ADP-00 DODE-00 CPR-02 PM-09 CIAE-00

INR-10 NSAE-00 RSC-01 PRS-01 /037 R

DRAFTED BY DOD/ OAGC(LA): BECOHEN; L/ AF: BKHUFFMAN: MMP

5/8/73 EXT 23736

APPROVED BY L/ AF: BKHUFFMAN

JAG- A: MR. SOLF

JAG- N: CMDR. KJOS

SAF/ GC: MR. FAYER

AF/ E: HRMELONE

L/ MSCA: HFSHAMWELL (DRAFT)

S/ CPR: HDAVIS (INFO)

----- 009091

R 082025 Z MAY 73

FM SECSTATE WASHDC

TO AMEMBASSY ADDIS ABABA

UNCLAS STATE 087113

E. O. 11652

TAGS: PFOR, ET

SUBJECT: IMMUNITIES OF MAAG NCO' S

REF: (A) STATE 223287 (9 DEC 72)

(B) ADDIS 2363 AND PREVIOUS

(C) SEBASTIAN, GETACHEW, MOHAMED MEMCON (27 FEB 1973)

1. DEPT AND DOD PLEASED WITH REPORTED DISPOSITION OF SCHUBERT AND ELLIOT CASES AND IMMINENT RESOLUTION LIGGENS CASE. ALSO ENCOURAGED BY IEG WILLINGNESS TO UNDERTAKE JOINT EFFORTS AVOID FUTURE ESCALATION OF MAAG PERSONNEL IMMUNITIES CASES.

2. FOLLOWING ARE DEPT VIEWS ON GETACHEW' S PROPOSAL CONCERNING IMMUNITIES:

A. BASIC PROVISION IS ARTICLE IV (1) OF MUTUAL DEFENSE ASSISTANCE AGREEMENT (MDAA) OF 1953 (TIAS 2787)
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WHICH STATES THAT MAAG PERSONNEL SHALL HAVE SAME STATUS AS OTHER EMBASSY PERSONNEL OF COMPARABLE RANK. (MAAG ENLISTED PERSONNEL CONSIDERED TO HAVE ADMIN. AND TECH. STAFF STATUS). 1953 US/ IEG TREATY OF AMITY (TIAS 2864) PROVIDES IN ARTICLE II THAT DIPLOMATIC REPRESENTATIVES, QUOTE ON THE BASIS OF RECIPROCITY, SHALL BE ACCORDED IN THE TERRITORIES OF SUCH OTHER HIGH CONTRACTING PARTY THE RIGHTS, PRIVILEGES, EXEMPTIONS AND IMMUNITIES DUE THEM UNDER GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW UNQUOTE.

B. AS EMBASSY AWARE, HOWEVER, VIENNA CONVENTION ON DIPLOMATIC RELATIONS WHICH IS REFLECTIVE OF GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW PROVIDES CIVIL IMMUNITY FOR ADMIN. AND TECH. STAFF ONLY IN OFFICIAL DUTY CASES. SINCE RECIPROCITY OBLIGATION IN TREATY OF AMITY IS TIED TO GENERALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW IT CANNOT BE SAID TO REQUIRE THAT ALL MAAG PERSONNEL RECEIVE FULL PRIVILEGES AND IMMUNITIES. THOUGH NOT STRICTLY REQUIRED, HOWEVER, IT WOULD BE DESIRABLE IF MAAG PERSONNEL AND ADMIN/ TECH STAFF IN ETHIOPIA ENJOYED SAME PRIVILEGES AND IMMUNITIES OF ETHIOPIAN ADMIN/ TECH STAFF IN WASHINGTON.

C. UNDER PAST AND PRESENT U. S. LAW AND PRACTICE, ALL PERSONNEL OF IEG MISSION IN WASHINGTON (INCLUDING ADMIN/ TECHNICAL AND SERVICE STAFF) GRANTED COMPLETE CIVIL AND CRIMINAL IMMUNITY. (F. Y. I. LATTER MAY BE ALTERED IN FUTURE IF FEDERAL LEGISLATION REPEALED AND U. S. PRACTICE BROUGHT INTO STRICT CONFORMITY WITH VIENNA CONVENTION STANDARDS.)

D. FACT THAT APPARENTLY ONLY GEN. COLLINS HAS BEEN NOTIFIED TO IEG AND CARRIES DIPLOMATIC PASSPORT SHOULD NOT CONTROL RESOLUTION OF IMMUNITIES ISSUE. FOR SAKE OF CLARITY, ALL MAAG PERSONNEL SHOULD BE NOTIFIED TO IEG IN A STATUS NOT LOWER THAN ADMIN. AND TECH. STAFF.

E. AS EMBASSY AWARE, VIENNA CONVENTION PROVISION FOR CIVIL IMMUNITY FOR ADMIN. AND TECH. STAFF ONLY IN OFFICIAL DUTY CASES IS IDENTICAL TO CIVIL IMMUNITY STATUS OF PERSONNEL AT KAGNEW STATION. HOWEVER, QUOTE ASSIMILATION UNQUOTE OF MAAG PERSONNEL TO KAGNEW PERSONNEL IS NOT UNCLASSIFIED

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3. EMBASSY SHOULD NOTE THAT DOD FOREIGN CLAIMS ACT PROVIDES FOR SETTLEMENT BY MILITARY DEPARTMENTS OF PROPERTY DAMAGE, PERSONAL INJURY, AND DEATH CLAIMS OF INHABITANTS OF FOREIGN COUNTRIES CAUSED BY ACTS OF U. S. MILITARY PERSONNEL (INCLUDING MAAG) WITHOUT REGARD TO OFFICIAL DUTY STATUS. ARMED FORCES CLAIMS COMMISSION AT KAGNEW STATION HAS RESPONSIBILITY FOR ALL SERVICES IN ETHIOPIA AND HAS AUTHORITY TO AWARD UP TO \$15,000.00 U. S. WHILE THIS AUTHORITY SHOULD NOT RPT NOT BE USED IN INDIVIDUAL CASES TO INDUCE IEG TO ABANDON AN ASSERTION OF JURISDICTION AGAINST MAAG PERSONNEL, ITS EXISTENCE SHOULD BE MADE KNOWN TO IEG OFFICIALS TO ALLAY ANY APPREHENSIONS CONCERNING USG ABILITY TO COMPENSATE FOR DAMAGE IT CAUSES IN FOREIGN COUNTRIES.

4. FINALLY, IN PENULTIMATE PARA REF (C), EMBOFF CORRECTLY CHARACTERIZES WAIVER OF DIPLOMATIC IMMUNITIES AS EXTRAORDINARY ACTION. IT IS ALWAYS DONE ON A CASE- BY- CASE BASIS AND THEREFORE IMPOSSIBLE TO SPECIFY CONDITIONS UNDER WHICH IT OCCURS. WAIVER IS A SOVEREIGN ACT AND NOT EXERCISABLE BY THE INDIVIDUAL AFFECTED.

5. ACTION REQUESTED: THAT YOU EXPLORE, AT OPPORTUNE OCCASION, FOREGOING VIEWS WITH IEG LEGAL OFFICIALS IN SAME INFORMAL MANNER DISCUSSIONS REPORTED IN MEMCON WERE CONDUCTED. ROGERS

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*** Current Handling Restrictions *** n/a
*** Current Classification *** UNCLASSIFIED
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*** Current Handling Restrictions *** n/a

*** Current Classification *** UNCLASSIFIED

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30 JUN 2005

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